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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

David Allen Harbour,

Defendant.

Case No. 2:19-cr-00898-DLR (DMF)

**REPLY IN SUPPORT OF
DEFENDANT'S EMERGENCY
MOTION TO AMEND
CONDITIONS OF RELEASE**

Defendant David Allen Harbour (Defendant), by and through undersigned counsel, files this Reply to the Government's Response (Doc. 554) to his Emergency Motion (Doc. 535).

ARGUMENT

1. This is an Attempt to Solve a Practical Problem, not a Theoretical Debate

We are certain that the Court appreciated the seriousness of the issue; that was indicated by the speed with which the Court directed the response and this reply. The issue is a very practical one: Harbour's confinement led to a number of difficulties in his preparing for trial but it must be said that the coordination with the directors and

1 personnel at CoreCivic in Florence has shown us that he cannot participate in his own
2 defense under the custody arrangement in place. At most, the schedule allows a
3 maximum of 2.5 hours a day for Harbour to sleep. If he cannot meaningfully participate
4 in his own defense, his lawyers cannot adequately defend him. If these circumstances
5 persist, how could any lawyer even think about putting him on the stand? And, obviously,
6 were he to testify in a sleep deprived condition, the problems are only magnified. If he
7 testifies, I imagine that he will be on the stand for at least two days, there would be no
8 time to prepare him between the examinations.
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11 The government's arguments as to why his bail was raised have nothing to do with
12 the issue at hand. While the court found he was a flight risk, there was no evidence that
13 he had ever taken any step to flee. The Court made the \$500,000 cash bond an "all-
14 condition" bond because of the breach of the financial conditions of release and not
15 because he was a flight risk. The financial issues are hardly going to dominate over the
16 next month and a half and we have not asked any changes in the very extreme conditions
17 the Court was set to impose if he had been able to post the additional \$500,000 cash
18 bond. His life in the present and near future will be completely dominated by defending
19 three trials.
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22 2. Sentencing Arguments are Not Well Taken

23 The government's arguments about sentencing should not be particularly
24 convincing. Elizabeth Holmes, the Theranos founder and current bell-weather in the
25 Circuit in terms of being sentenced for mail fraud, recently received a 135-month
26 sentence for a fraud in excess of \$100,000,000 which definitely involved the health and
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1 safety of millions of people. As of this moment, she remains free on bail (even though it
2 appears that she bought a one-way plane ticket to Mexico during her release). Briefing on
3 a request for a bond on appeal remains open.
4

5 Here, it is patently obvious that, from a causation standpoint, which is what drives
6 sentencing, the proximate causation that anyone associated with Harbour in Payday 1 lost
7 *anything* is wholly the government's fault. There was an inexhaustible supply of
8 consumer borrowers in States without usury laws or with very high lawful interest rates,
9 whose borrowing at very high interest rates provided a huge amount of returns for those
10 on the lending side.
11

12 As for Payday 2, the losses (\$1 million Burg and \$350,000 Turasky) were
13 precipitated by PAIF's foreclosure of the Green Circle portfolio. These losses were also
14 not "caused" by Harbour. In reality, Harbour is really in the Guideline range we
15 discussed in our initial motion to revisit the release conditions.
16

17 Assuming a conviction, were he to receive a 60-month sentence, the anticipated
18 good time would reduce it to 51 months. He would get pretrial credit of at least 14
19 months, leaving around 37 months to be served. The tax case, now admitted by the
20 government to involved \$169,000, and the mortgage fraud case is a \$242,000 case with a
21 loan not in foreclosure and the property worth well in excess of the total loan, would
22 likely add nothing or next to nothing to any sentence. It is a case in which the government
23 will never be able to show that Harbour played any more than a minor role. The
24 government has no proof that Harbour signed anyone's name to anything. Its latest FBI
25 document report does not assist the government in the slightest.
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CONCLUSION

Between the parties, we believe that somewhere around 1000 written exhibits will be offered. Our need to consult with our client in his defense depends upon his being awake to listen and speak and, if he needs to testify, he is certainly going to need a clear head and his wits about him. Moving him closer might be incrementally better than where is will be if the present situation holds but it will certainly not improve things very much. And, of course, there will be trade-offs. Presently, he has computer access which has been vital in preparing. We imagine that, if he is a county facility, the Court cannot order that his computer access continue. Some facilities, like the LBJ, do not have face-to-face client-counsel rooms available. Documents cannot be reviewed together. There will be days during trial when the Court will be dark and weekends. Harbour's place during those times as well as before and after court is best suited for our offices.

Finally, we believe that Harbour's 80-year-old mother will sign a personal appearance bond, should the Court require it. We appreciate the Court hearing our request.

RESPECTFULLY SUBMITTED this 25th day of January 2023.

CHRISTIAN DICHTER & SLUGA, P.C.

By: /s/ Stephen M. Dichter

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and for transmittal of Notice of Electronic Filing to the following CM/ECF registrants:

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